**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**APPELLATE SIDE**

**WRIT PETITION NO. 4459 OF 1994**

**NASHIK DISTRICT MARATHA VIDYA**
**PRASAERAK SAMAJ ... PETITIONER.**

**VS.**

**SHRI BHASKAR DAULAT BHAMARE ... RESPONDENT.**

**MR. K.Y.MAHADIK FOR THE PETITIONER.**
**MR. MIHIR DESAI FOR THE RESPONDENT.**

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**CORAM : A.P. DESHPANDE, J.**

**DATE : January 10, 2007.**

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**: O R A L J U D G M E N T :**

1. Heard.

2. This petition is filed by the Petitioner-Institution questioning the legality and validity of the judgment and Order passed by the Presiding Officer of University and College Tribunal, allowing the appeal filed by the respondent.

3. Few facts which are material for deciding the question in issue are narrated herein below :-

(a) The Respondent was initially appointed as Assistant Teacher in September, 1979 in a junior college, administered and managed by the Petitioner. It will not be out of place to state that the service conditions of the employees working in junior college are governed by the Maharashtra Employees of Private School ( Condition of Service) Regulation Act,1977 Act and Rules made thereunder ;

(b) In the year 1987, a vacancy arose in the Senior College of the Petitioner for the subject, which the petitioner was teaching and the petitioner being desirous of seeking appointment in the senior college, applied for the post of lecturer in senior college. It is the case of the petitioner that the local Managing Committee conducted the interviews and the petitioner came to be temporarily appointed for a period of one year.

4. Perusal of the appointment order clearly reveals that the respondent was appointed under an order, dated 20th September,1987, till the last working day of the faculty academic session 1987-88, which admittedly expired in April,1988. The appointment order terms the appointment as purely temporary. Pursuant to the Order of appointment, the respondent ceased to continue in service as a lecturer in senior college in April, 1988. Thereafter the petitioner again re-advertised the same post and statutorily constituted selection committee, held interviews, in which process the respondent came to be rejected, whereas one M.T. Hyalij was selected and consequently appointed. It is the case of the petitioner-Management that as the respondent had served with the petitioner for about 10 years with a view to see that no prejudice is caused to the respondent, the petitioner appointed the respondent in junior college as before, from 29.7.1988 and since then till date, the respondent continues to serve in the junior college.

5. The Respondent filed an appeal before the University and College Tribunal as late as in May, 1992 i.e. after a period of more than four years and contended that the respondent’s appointment in college was on probation and the termination from the end of

Academic year 1987-88 was illegal. The Petitioner had put forth three fold submissions before the tribunal, as follows :-

(i) that the respondent was appointed temporarily as lecturer in senior college, vide Order dated 20th Sept., 1987 only up to the end of academic session which expired in April, 1988;

(ii) that the respondent had acquiesced in the termination of his service as lecturer in senior college inasmuch as the respondent had accepted the appointment in Junior College from July, 1988 without any demur and hence the respondent could not have questioned the legality of the termination belatedly, after a period of more than four years;

(iii) Lastly, it is contended that the respondent had taken a calculated chance and had participated in the process of selection in July,1988 when the post in the Sr.College was re-advertised and after his rejection in the selection process appeal has been filed,

challenging the termination;

6. Rejecting the above contentions, the Tribunal proceeded to hold that the appointment of the respondent was on probation and that the termination is illegal.

7. The appointment order clearly indicate that the nature of the appointment was purely temporary and it is only till the end of academic session, The appointment Order is dated 28th September, 19987 and the relevant part of the Order reads thus :-

> "Your appointment is purely temporary for the period of one year up to the last working day of academic year 1987-88"

The discontinuance of the respondent is from the end of Academic Session 1987-88, in terms of the Order. The nature of the appointment has to be determined having regard to the terms of the Order of the appointment. I have no doubt in my mind that the appointment of the respondent was of temporary nature and the respondent has accepted the same. The Respondent has also acquiesced in termination of his service from Sr.College

by joining as lecturer in junior college in July, 1988. It is difficult to understand as to what promoted the respondent, after a period of more than four years to file an appeal and question the correctness of the discontinuance of the respondent from service. Be that as it may, the appeal so filed belatedly by the respondent, came to be allowed. by erroneously holding that the Respondent's appointment was on probation. During the pendency of this writ petition, the impugned order passed by the Tribunal was stayed and the respondent continue to serve in junior college . The person who has been appointed pursuant to the selection process conducted in July,1988, has now put in about 12 years of service. I do not find any illegality in discontinuance of the respondent on expiry of the term of the temporary appointment. I am also of the clear view that the respondent having acquiesced in his discontinuance from the service as aforesaid is estopped from challenging the discontinuance by terming it as an illegal termination by preferring an appeal before the University Tribunal.

8. At this stage, the learned Counsel for the respondent submits that the respondent had worked for about one year in senior college and the same could be construed as a break in service in Jr. College and if

continuance in service is not granted expressly, then the respondent is likely to suffer . The learned Counsel for the Petitioner - Management submits that with a view to protect the service of the respondent, he was immediately appointed in junior college on his dis-continuance from senior college and in no way the respondent is subjected to prejudice or loss.

9. As the respondent is in continuous service in junior college since 1979 till date and had worked in senior college only for one academic session, it would be in the interest of justice that the technical break, if any, should be condoned. The period of service rendered by the Respondent shall not be treated as break in service and the Respondent needs to be treated as in continuous service since his initial appointment in Jr. College till date. The said break, if any, shall be condoned by the authorities concerned.

In the result, writ petition is allowed. The impugned Order passed by the Presiding Officer, College Tribunal, dated 19.1.1992, is hereby quashed and set aside.

Rule made absolute in above terms.

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[A.P.DESHPANDE, J.]

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.4459 OF 1994

DATE OF DECISION : 10.1.2007

For approval and signature :

The Hon'ble Mr. Justice A.P.Deshpande :

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ?

3. Whether Their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment

should be sent to Nagpur Office?

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